



Agenda Number: 8
Case Number: BA-20100014/ZA-20100014
Hearing Date: August 4, 2010

Appellant: Fernando Chavez & Alicia Cruz
855 Arthur Dr. SW
Albuquerque, NM 87105

Agent:

Applicant: Fernando Chavez & Alicia Cruz
855 Arthur Dr. SW
Albuquerque, NM 87105

Agent:

Site Location: 855 Arthur Dr. SW

Zone Designation: R-1 Single-Family Residential

Recommendation: Denial

VICINITY MAP

Summary: This request is an appeal of the Zoning Administrator's denial of a variance of 10 feet to the required front yard setback distance. Then appellant seeks approval to allow the continued placement of an unpermitted single-family dwelling (manufactured home with an attached porch) at ten feet from the front property line.

Staff Contact: Brennon Williams, Zoning Administrator

- Attachments:**
1. Appeal application
 2. Notice of Decision (May 18, 2010)
 3. Original application with provided site plan
 4. Agency comments for ZA application
 5. Site photographs, aerial photograph, zone atlas page

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Fernando Chavez & Alicia Cruz appeal the Zoning Administrator's decision in denying a variance of 10 feet to the required front yard setback distance on Tract 9, Babes Addition, located at 855 Arthur Dr. SW, zoned R-1, and containing approximately .133 acres. (M-13) (Original request submitted by Fernando Chavez & Alicia Cruz)

BACKGROUND

The Request

The appellant is requesting that the ZA's decision to deny a variance of 10 feet to the required front yard setback distance be overturned.

The Property

The subject site is located at 855 Arthur Dr. SW, zoned R-1, and is approximately .133 acres in area. The property is currently developed with an unpermitted manufactured home and attached porch. The site plan submitted with the original request shows that the development is just ten (10) feet from the front property line, while the minimum setback distance required is 20 feet.

The Hearing

The request was presented at the Zoning Administration hearing held on May 11, 2009. Fernando Chavez, property owner, presented the request through the assistance of a translator, Maria Marquez. Mr. Chavez testified that a former single-wide mobile home on the property burned down approximately two years prior, and the subject manufactured home had been brought to the property to replace the burned unit. He stated that he assumed that a permit for the placement of the manufactured home also included construction on an attached porch, and that the addition would meet building code requirements, as he had twenty years experience in the construction industry.

When asked how the proposal met the criteria for approval, Mr. Chavez explained that most other structures in the area were "old", while his property possessed one of the newer dwelling units in the neighborhood. Additionally, he noted that his house was the only property in the area with a "large" porch addition.

The Decision

The Zoning Administrator denied the request based on findings that the described unique features related to the development on the site, not the property itself. Further, it was determined that the encroachment into the front yard setback distance was not necessary in order to allow the owner reasonable use of the property, but rather, was based solely on the owner's desire to correct the self-created hardship and meet his personal design wishes.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 9. R-1 Single-Family Residential Zone.

- A. The regulations set forth in this section or set forth elsewhere in this ordinance, when referred to in this section, are the regulations in the R-1 Residential Zone. The purpose of this zone is to provide for the development of single-family homes on lots not less than three-quarters [of an] acre in area, except that where community water and sewer facilities are made available, the lot size may be reduced consistent with development densities in the Albuquerque/Bernalillo County Comprehensive Plan. The regulations provide for the health, safety and welfare of the residents.
- B. Use Regulations. A building or premises shall be used only for the following purposes, all uses customarily incidental to the building or premises shall be maintained on site:

1. Prohibited Uses. The following uses are prohibited in this zone:
 - a. The open storage of inoperative vehicles or auto parts;
 - b. The open storage of trash or junk;
 - c. The open storage of large appliances;
 - d. Any use not designated a permissive use or conditional use in this zone, unless otherwise authorized by this Code; or
 - e. Any use not recognized as customarily incidental to a permitted use in this zone.
2. Permissive Uses:
 - a. Agricultural activity, including truck gardening and nurseries, fur bearing animal farm, the raising of poultry or rabbits, dairy farming, livestock grazing, feeding, and the raising of livestock on lots containing three acres or more. On lots of less than three acres, there shall be at least 10,000 square feet of lot area for each cow or horse, and/or at least 4,000 square feet of lot area for each sheep, pig, or goat, provided that any building, pen, or corral where such animal is located is at least 20 feet from any existing dwelling unit. Stands for the display or sale of home-raised agricultural products, including poultry or rabbits raised on the premises.
 - b. One single-family dwelling or H.U.D. Zone Code II manufactured home per lot.
 - c. Accessory building, structure, or use customarily incidental to the above uses, such building or structure shall be limited to an area of 600 square feet or less.
 - d. Noncommercial library, museum, and art gallery.
 - e. Recreational vehicle or boat storage in the rear yard when such recreational vehicle or boat is not to be used as accessory living quarters, and is not connected to utilities, other than temporarily to a source of electricity. Recreational vehicle used for dwelling purposes served only by electricity for lighting purposes, the use of such recreational vehicle shall be limited to a maximum of two weeks in any calendar year.
 1. In the event where rear yard access is not available, outside parking in the front yard is allowed, provided:
 - (a) The body of the recreational vehicle or boat is at least 11 feet from the front property line.
 - (b) No part of the unit extends onto the public right-of-way.
 - (c) A corner lot is always deemed to have reasonable access to the rear yard; a fence or wall is not necessarily deemed to prevent reasonable access.
 - f. Signs not exceeding eight square feet in area pertaining to the lease, hire, or sale of a premises or sale of home-raised products, provided there shall be no more than one such sign on each lot and provided further that, if illuminated, the source of such illumination shall be nonoscillating and nonflashing.
 - g. Parking incidental to uses permitted in this zone, provided all vehicles which are not parked inside a building are operative and are not wholly or partially dismantled.
 - h. Home occupation.
 - i. Concealed Wireless Telecommunications Facility, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - j. Wireless Telecommunications Antenna located on a public utility structure, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - k. Amateur Radio Antenna/Tower up to 65 feet as measured from grade.
 - l. Garage or yard sale, provided:
 1. No more than four events are allowed at a given dwelling in any calendar year. The duration of the garage or yard sale shall not exceed three consecutive days.
 2. No items shall be purchased for a garage or yard sale for the purpose of resale; items shall be of the type normally accumulated by a household.
 3. One non-illuminated, on-premise sign, not exceeding four square feet in area shall be permitted. The sign shall pertain to the garage or yard sale only and shall be permitted only for the three-day period of the sale.

3. Conditional Uses. The following uses may be permitted if approved by the Zoning Administrator in accordance with the procedures and under the conditions set out in the administrative Section of this ordinance with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.
- a. Accessory building or structure in excess of 600 square feet in area and incidental to the uses listed under Section 7.B.1. and 7.B.2.
 - b. Amateur Radio Antenna/Tower 65 to 100 feet as measured from grade.
 - c. Church and incidental facilities.
 - d. School.
 - e. Day Care Center.
 - f. Family Day Care Home.
 - g. Temporary festivals, circuses, carnivals or activities in a tent, provided that the use or activity meets the following requirements:
 - (1) The minimum lot size per use or activity shall be five acres.
 - (2) All required parking shall be located on the same site with the activity or use.
 - (3) The use or activity shall be at least two miles from the nearest conforming residential use.
 - (4) Prior approval of the proposed use or activity must be obtained from the County Sheriff, County Fire Department, County Environmental Health, County Public Works, City of Albuquerque Air Pollution Control, and Albuquerque Metropolitan Arroyo Flood Control Authority or their authorized representative.
 - (5) The hours of operation, shall be between 6:00 a.m. and 8:00 p.m. This includes the time of erection and dismantling.
 - (6) The use or activity shall be limited to three days in one calendar year.
 - (7) No permanent structures shall be erected.
 - (8) Temporary fencing may be erected, and shall be removed within 24 hours after the activity.
 - h. Real estate sales office and real estate signs exceeding the limitations in Subsection 8.B.(1).f. above in connection with a specific development for a period of not more than two years.
 - i. Recreational facility (nonprofit) such as swimming pools or tennis clubs on sites containing not less than one acre.
 - j. Temporary storage building or yard for equipment, material or activity incidental to a specific construction project but not to exceed one year, unless the time is extended by the Zoning Administrator.
 - k. Mobile home used as a dwelling (with connections to any utilities) during construction of a dwelling on the same premises, provided such use shall be limited to a maximum period of 24 months.
 - l. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
 - m. Nonprofit animal facility.
 - n. Park.
 - o. Home occupation where the business includes visits to the site from clients, customers, patients, patrons, or similar individuals. Such home occupations may allow for employment of one non-family member and may be approved for a period of time not to exceed three years.

C. Height Regulations. Buildings and structures shall not exceed 26 feet or 2 1/2 stories in height, except as provided in The Supplementary Height and Area Regulations Section of this ordinance.

D. Area Regulations:

1. Minimum Lot Area and Lot Width. Every lot shall have a minimum area of not less than three-quarters [of an] acre and a minimum lot width of 60 feet, except that where community water and sewer facilities are available, the lot area may be decreased to 8,000 square feet if located in the Developing, Established or Central Urban Areas, or 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan.
2. Front Yard.
 - a. There shall be a front yard having a depth of not less than 20 feet except as provided in the Supplementary Height and Area Regulations Section of this ordinance.
 - b. Where lots have double frontage, the required front yard shall be provided on both streets.
3. Side Yard:
 - a. Except as hereinafter provided in the following paragraph and in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a side yard on both sides of a building the aggregate width of which shall be not less than 14 feet, provided, however, that neither such yard shall be less than six feet in width.
 - b. Wherever a lot of record, at the effective date of this ordinance, has a width of less than 60 feet, each side yard may be reduced to a width of not less than ten percent of the width of the lot, but in no instance shall it be less than three feet.
4. Rear Yard. Except as hereinafter provided in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a rear yard having a depth of not less than 15 feet.

E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-street Parking, Loading and Unloading Regulations Section of this ordinance.

Section 24.A.2. Administration. Zoning Administrator. Powers and Duties.

h. Investigation of Applications:

(1) Investigate all applications for variances from the height, area, parking or density regulations of this ordinance, and to grant such applications to the extent necessary to permit the owner reasonable use of his land in those specified instances where there are peculiar, exceptional, and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned.

(2) Investigate all applications for an extension of the time limitations authorized by the Nonconforming Use Regulations Section of this ordinance or for an expansion of up to 25 percent of the original floor area for residential uses in residential zones, and to grant such applications if the use does not seriously conflict with the character of the surrounding area and in case of expansion of the use the site is adequate in size and shape to accommodate such expansion and the expansion does not increase the number of dwelling units on the lot or in any structure.

Agency Comments

Comments received for the request from the Bernalillo County Building Department stated that all portions of the burned house would need to be removed from the property. The county Environmental Health Department and Public Works Division had no adverse comment to the proposal.

INFORMATION SUBMITTED FOR THE APPEAL

The appellant doesn't specifically address how the previous determination was in error or address the criteria for approval as outlined by the ordinance, but rather, reiterates their request for permission to continue and complete the porch addition. They have also included what appears to be a list of area residents in support of their project.

Analysis of Submitted Material

Although staff can appreciate the owner's desire to be allowed to complete the project, the criteria necessary for approval continues to be unaddressed and apparently unattainable. The lawful granting of a variance is intended to be used as a device for adjustment where certain characteristics of the subject site are so different than lots in the area that compliance with the zoning ordinance will create an unnecessary hardship (i.e., allow the affected property owner to enjoy rights and privileges as nearly equal as possible to other property owners in the same area and same zoning district). Furthermore, the request must be limited only to allow owners reasonable use of the property; and not grant privileges, uses, or benefits that others in the same zone and zoning are not allowed to accomplish as well. In addition, the opinion of neighbors carries no weight in reaching a decision. The result may be the granting of a variance based on the type of neighbors the appellant has, rather than the equities involved.

Analysis Summary

CRITERIA	APPEAL INFORMATION	STAFF ANALYSIS
Property possesses peculiar, exceptional, and unusual circumstances?	<ul style="list-style-type: none"> - This issue has not been addressed in the materials provided for the appeal. 	<ul style="list-style-type: none"> - The previously reported age of the dwelling unit on the site, as well as the sole property in the neighborhood with a large porch are not related to the property, but rather the existing development on the site. - The unique circumstances should relate to the physical characteristics of the property. Such characteristics may include dimensions, topography or soil conditions, or by other extraordinary situation or condition of the property.
The reported unique circumstances are limited to the subject site and are not found within the neighborhood or area concerned?	<ul style="list-style-type: none"> - This issue has not been addressed in the materials provided for the appeal. 	<ul style="list-style-type: none"> - The previously reported age of the dwelling unit on the site, as well as the sole property in the neighborhood with a large porch are not related to the property, but rather the existing development on the site. - The unique circumstances should relate to the physical characteristics of the property. Such characteristics may include dimensions, topography or soil conditions, or by other extraordinary situation or condition of the property.
The requested variance is limited to the extent to allow the owner reasonable use of the property?	<ul style="list-style-type: none"> - This issue has not been addressed in the materials provided for the appeal. 	<ul style="list-style-type: none"> - Reasonable use of a property is determined by the numerous activities listed in the zoning ordinance, as well as the ability to meet the development standards listed. In this case, without evidence of any unique circumstances and the owner's apparent ability to construct the porch and/or place the dwelling unit within the required setback areas, reasonable use of the site is clearly demonstrated without the need for a variance to the setback standard. - Neighborhood support or opposition is not relevant to variance requests.

CONCLUSION

The Zoning Ordinance authorizes the Board of Adjustment to hear and determine appeals from the decisions of the Zoning Administrator in denying variance applications. However, based on the information provided with the appeal, as well as consideration of the materials and testimony provided for the original application, staff respectfully submits this matter to the BA with the following recommendation:

RECOMMENDATION

Denial of BA-20100014/ZA-20100014, thereby upholding the previous determination of the Zoning Administrator.

Brennon Williams
Zoning Administrator